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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/509,482	09/15/2000	Linda Anne Crofts	1871-130	9624
24353	7590	06/08/2004	EXAMINER	
BOZICEVIC, FIELD & FRANCIS LLP 200 MIDDLEFIELD RD SUITE 200 MENLO PARK, CA 94025				ULM, JOHN D
ART UNIT		PAPER NUMBER		
1646				

DATE MAILED: 06/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/509,482	CROFTS ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	John D. Ulm	1646

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 29 March 2004.  
 2a) This action is **FINAL**.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-4,9-14,19-24,27,28 and 30-40 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 1-4,9-12,21-24,27,28 and 30-40 is/are allowed.  
 6) Claim(s) 13,14,19 and 20 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 3/29/04 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.  
 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

1) Claims 1 to 4, 9 to 14, 19 to 24, 27, 28 and 30 to 40 are pending in the instant application. Claims 1 to 4, 9, 13, 19 to 24, 27, 28, 30 to 32 and 35 have been amended, claims 5 to 8, 15 to 18, 25 and 26 have been canceled and claims 37 to 40 have been added as requested by Applicant in the correspondence filed 29 March of 2004.

2) Any objection or rejection of record that is not expressly repeated in this action has been overcome by Applicant's response and withdrawn.

3) The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4) Claims 1 to 4, 9 to 14, 19 to 24, 27, 28 and 30 to 40 are allowable as written.

5) Claims 19 and 20 stand objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim for those reasons of record. Each of these claims can be infringed by a polynucleotide that does not infringe at least one of the claims from which they multiply depend. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

6) Claims 13 and 14 are rejected under 35 U.S.C. 112, first and second paragraph, as not being enabled and as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims are vague and indefinite because there is no antecedent basis for "a VDR or VDR isoform polypeptide". These claims are incomplete and, therefore, not enabled

because they do not require an isolated polynucleotide encoding the “VDR or VDR isoform polypeptide” that is produced by the claimed method. The instant specification does not provide the guidance needed to produce a specific protein by culturing a transformed cell lacking a polynucleotide encoding that protein. Neither claim 1 nor any of the intervening claims from which claims 13 and 14 depend are limited to an isolated polynucleotide encoding a “VDR or VDR isoform polypeptide”.

7) Claims 19 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims are vague and indefinite because there is no antecedent basis for “the nucleotide sequence of any one of claims 21 –24 or 28”, which are each drawn to “an isolated polynucleotide molecule”.

8) Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John D. Uilm whose telephone number is (571) 272-0880. The examiner can normally be reached on 9:00AM to 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kunz Gary can be reached on (571) 272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JOHN D. UILM  
PRIMARY EXAMINER  
CIVIL PATENT GROUP